

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

USA,  
v.  
Plaintiff,  
ANTONIETTA NGUYEN,  
Defendant.

Case No. 23-cr-00155-SI-1

**DRAFT FINAL JURY INSTRUCTIONS**

## JURY INSTRUCTION NO. 1

## DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law. You will recall that you took an oath promising to do so at the beginning of the case. Do not allow personal likes or dislikes, sympathy, prejudice, fear, or public opinion to influence you. You should also not be influenced by any person's race, color, religious beliefs, national ancestry, sexual orientation, gender identity, gender, or economic circumstances. Also, do not allow yourself to be influenced by personal likes or dislikes, sympathy, prejudice, fear, public opinion, or biases, including unconscious biases. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control, or intention.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

## JURY INSTRUCTION NO. 2

CHARGE AGAINST DEFENDANT NOT EVIDENCE—PRESUMPTION OF  
INNOCENCE—BURDEN OF PROOF

The defendant has pleaded not guilty to the charges. The defendant is presumed to be innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant does not have to testify or present any evidence. The defendant does not have to prove innocence; the government has the burden of proving every element of the charges beyond a reasonable doubt.

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2 JURY INSTRUCTION NO. 3

## 3 DEFENDANT'S DECISION NOT TO TESTIFY

4 A defendant in a criminal case has a constitutional right not to testify. In arriving at your  
5 verdict, the law prohibits you from considering in any manner that the defendant did not testify.

6

7 JURY INSTRUCTION NO. 4

## 8 REASONABLE DOUBT—DEFINED

9 Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is  
10 guilty. It is not required that the government prove guilt beyond all possible doubt.11 A reasonable doubt is a doubt based upon reason and common sense and is not based purely  
12 on speculation. It may arise from a careful and impartial consideration of all the evidence, or from  
13 lack of evidence.14 If after a careful and impartial consideration of all the evidence, you are not convinced  
15 beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not  
16 guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are  
17 convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant  
18 guilty.

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20 JURY INSTRUCTION NO. 5

## 21 WHAT IS EVIDENCE?

22 The evidence from which you are to decide what the facts are consists of:

23 (1) the sworn testimony of any witness;  
24 (2) the exhibits which have been received in evidence; and  
25 (3) any facts to which the parties have agreed.

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1 **JURY INSTRUCTION NO. 6**  
23 **WHAT IS NOT EVIDENCE**  
45 In reaching your verdict you may consider only the testimony and exhibits received in  
6 evidence. The following things are not evidence, and you may not consider them in deciding what  
7 the facts are:  
89 1. Questions, statements, objections, and arguments by the lawyers are not evidence. The  
10 lawyers are not witnesses. Although you must consider a lawyer's questions to understand the  
11 answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said  
12 in their opening statements, will say in their closing arguments, and have said at other times is  
13 intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them  
14 differ from the way the lawyers state them, your memory of them controls.  
1516 2. Any testimony that I have excluded, stricken, or instructed you to disregard is not  
17 evidence.  
1819 3. Anything you may have seen or heard when the court was not in session is not evidence.  
20 You are to decide the case solely on the evidence received at the trial.  
2122 **JURY INSTRUCTION NO. 7**  
2324 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**  
2526 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as  
27 testimony by a witness about what that witness personally saw or heard or did. Circumstantial  
28 evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another  
fact.29 You are to consider both direct and circumstantial evidence. Either can be used to prove any  
30 fact. The law makes no distinction between the weight to be given to either direct or circumstantial  
31 evidence. It is for you to decide how much weight to give to any evidence.32 By way of example, if you wake up in the morning and see that the sidewalk is wet, you may  
33 find from that fact that it rained during the night. However, other evidence, such as a turned-on  
34 garden hose, may provide an explanation for the water on the sidewalk. Therefore, before you decide  
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1 that a fact has been proven by circumstantial evidence, you must consider all the evidence in the  
2 light of reason, experience, and common sense.

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4 **JURY INSTRUCTION NO. 8**

5 **CREDIBILITY OF WITNESSES**

6 In deciding the facts in this case, you may have to decide which testimony to believe and  
7 which testimony not to believe. You may believe everything a witness says, or part of it, or none  
8 of it.

9 In considering the testimony of any witness, you may take into account:

10 (1) the opportunity and ability of the witness to see or hear or know the things testified  
11 to;

12 (2) the witness's memory;

13 (3) the witness's manner while testifying;

14 (4) the witness's interest in the outcome of the case, if any;

15 (5) the witness's bias or prejudice, if any;

16 (6) whether other evidence contradicted the witness's testimony;

17 (7) the reasonableness of the witness's testimony in light of all the evidence; and

18 (8) any other factors that bear on believability.

19 Sometimes a witness may say something that is not consistent with something else he or she  
20 said. Sometimes different witnesses will give different versions of what happened. People often  
21 forget things or make mistakes in what they remember. Also, two people may see the same event  
22 but remember it differently. You may consider these differences, but do not decide that testimony  
23 is untrue just because it differs from other testimony.

24 However, if you decide that a witness has deliberately testified untruthfully about something  
25 important, you may choose not to believe anything that witness said. On the other hand, if you think  
26 the witness testified untruthfully about some things but told the truth about others, you may accept  
27 the part you think is true and ignore the rest.

28 You must avoid bias, conscious or unconscious, based on a witness's race, color, religious

1 beliefs, national ancestry, gender identity, gender, or economic circumstances in your determination  
2 of credibility.

3 The weight of the evidence as to a fact does not necessarily depend on the number of  
4 witnesses who testify. What is important is how believable the witnesses were, and how much  
5 weight you think their testimony deserves.

6

7 JURY INSTRUCTION NO. 9 [if needed]

8 IMPEACHMENT EVIDENCE – WITNESS

9 You have heard evidence that [name of witness], a witness, [specify basis for impeachment].  
10 You may consider this evidence in deciding whether or not to believe this witness and how much  
11 weight to give to the testimony of this witness.

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13 JURY INSTRUCTION NO. 10

14 OPINION EVIDENCE, EXPERT WITNESS

15 You have heard testimony from some witnesses who testified about their opinions and the  
16 reasons for those opinions. This opinion testimony is allowed because of the specialized knowledge,  
17 skill, experience, training, or education of these witnesses.

18 Such opinion testimony should be judged like any other testimony. You may accept it or  
19 reject it, and give it as much weight as you think it deserves, considering the witness's knowledge,  
20 skill, experience, training, or education, the reasons given for the opinion, and all the other evidence  
21 in the case.

22

23 JURY INSTRUCTION No. 11 [if needed]

24 CHARTS AND SUMMARIES NOT ADMITTED INTO EVIDENCE

25 During the trial, certain charts and summaries were shown to you to help explain the  
26 evidence in the case. These charts and summaries were not admitted into evidence and will not go  
27 into the jury room with you. They are not themselves evidence or proof of any facts. If they do not  
28 correctly reflect the facts or figures shown by the evidence in this case, you should disregard these

1 charts and summaries and determine the facts from the underlying evidence.  
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3 **JURY INSTRUCTION No. 12**

4 **CHARTS AND SUMMARIES ADMITTED INTO EVIDENCE**

5 Certain charts and summaries have been admitted into evidence. Charts and summaries are  
6 only as good as the underlying supporting material. You should, therefore, give them only such  
7 weight as you think the underlying material deserves.

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9 **JURY INSTRUCTION NO. 13**

10 **ACTIVITIES NOT CHARGED**

11 You are here only to determine whether the defendant is guilty or not guilty of the charges  
12 in the Indictment. The defendant is not on trial for any conduct or offense not charged in the  
13 Indictment.

14  
15 **JURY INSTRUCTION NO. 14**

16 **SEPARATE CONSIDERATION OF MULTIPLE COUNTS—SINGLE DEFENDANT**

17 A separate crime is charged against the defendant in each count. You must decide each count  
18 separately. Your verdict on one count should not control your verdict on any other count.

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20 **JURY INSTRUCTION NO. 15**

21 **WIRE FRAUD (Counts One through Five)**

22 The defendant is charged in Counts One through Five of the Superseding Indictment with  
23 wire fraud in violation of Section 1343 of Title 18 of the United States Code.

24 For the defendant to be found guilty of that charge, the government must prove each of the  
25 following elements beyond a reasonable doubt:

26 First, the defendant knowingly devised a scheme or plan to defraud for the purpose of  
27 obtaining money or property by means of false or fraudulent pretenses, representations, or promises,  
28 or omitted facts. Deceitful statements of half-truths may constitute false or fraudulent

1 representations;

2 Second, the statements made or facts omitted as part of the scheme were material; that is,  
3 they had a natural tendency to influence, or were capable of influencing, a person to part with money  
4 or property;

5 Third, the defendant acted with the intent to defraud, that is, the intent to deceive and cheat;  
6 and

7 Fourth, the defendant used, or caused to be used, an interstate wire communication to carry  
8 out or attempt to carry out an essential part of the scheme.

9 In determining whether a scheme to defraud exists, you may consider not only the  
10 defendant's words and statements but also the circumstances in which they are used as a whole.

11 To convict the defendant of wire fraud based on omissions of material facts, you must find  
12 that the defendant had a duty to disclose the omitted facts arising out of a relationship of trust. That  
13 duty can arise either out of a formal fiduciary relationship, or an informal, trusting relationship in  
14 which one party acts for the benefit of another and induces the trusting party to relax the care and  
15 vigilance that it would ordinarily exercise.

16 A wiring is caused when one knows that a wire will be used in the ordinary course of business  
17 or when one can reasonably foresee such use.

18 It need not have been reasonably foreseeable to the defendant that the wire communication  
19 would be interstate in nature. Rather, it must have been reasonably foreseeable to the defendant that  
20 some wire communication would occur in furtherance of the scheme, and an interstate wire  
21 communication must have actually occurred in furtherance of the scheme.

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23 **JURY INSTRUCTION NO. 16**

24 **FIDUCIARY DUTY**

25 A "fiduciary" duty exists whenever one person or entity places special trust and confidence  
26 in another person—the fiduciary—in reliance that the fiduciary will exercise his or her discretion  
27 and expertise with the utmost honesty and forthrightness in the interests of the person or entity, such  
28 that the person or entity relaxes the care and vigilance that he, she, or it would ordinarily exercise,

1 and the fiduciary knowingly accepts that special trust and confidence and thereafter undertakes to  
2 act on behalf of the other person or entity based on such reliance.

3 The mere fact that a business relationship arises between two persons does not mean that  
4 either owes a fiduciary duty to the other. If one person engages or employs another and thereafter  
5 directs, supervises, or approves the other's actions, the person so employed is not necessarily a  
6 fiduciary. Rather, as previously stated, it is only when one party places, and the other accepts, a  
7 special trust and confidence—usually involving the exercise of professional expertise and  
8 discretion—that a fiduciary relationship exists.

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10 **JURY INSTRUCTION NO. 17**

11 **CONSPIRACY TO COMMIT WIRE FRAUD (Count Six)**

12 The defendant is charged in Count Six of the Superseding Indictment with conspiring to  
13 commit wire fraud in violation of Section 1349 of Title 18 of the United States Code. For the  
14 defendant to be found guilty of that charge, the government must prove each of the following  
15 elements beyond a reasonable doubt:

16 First, beginning no later than in or about January 2016, and continuing through in or about  
17 March 2020, there was an agreement between two or more persons to commit at least one crime as  
18 charged in the indictment; and

19 Second, the defendant became a member of the conspiracy knowing of at least one of its  
20 objects and intending to help accomplish it.

21 A conspiracy is a kind of criminal partnership—an agreement of two or more persons to  
22 commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful;  
23 it does not matter whether the crime agreed upon was committed.

24 For a conspiracy to have existed, it is not necessary that the conspirators made a formal  
25 agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they  
26 simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one  
27 another. You must find that there was a plan to commit at least one of the crimes alleged in the  
28 indictment as an object of the conspiracy with all of you agreeing as to the particular crime which

1 the conspirators agreed to commit.

2 One becomes a member of a conspiracy by knowingly participating in the unlawful plan  
3 with the intent to advance or further some object or purpose of the conspiracy, even though the  
4 person does not have full knowledge of all the details of the conspiracy. Furthermore, one who  
5 knowingly joins an existing conspiracy is as responsible for it as the originators. On the other hand,  
6 one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object  
7 or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not  
8 become a conspirator merely by associating with one or more persons who are conspirators, nor  
9 merely by knowing that a conspiracy exists.

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11 JURY INSTRUCTION NO. 18

12 WIRE FRAUD (Counts Seven through Nine)

13 The defendant is charged in Counts Seven through Nine of the Superseding Indictment with  
14 wire fraud in violation of Section 1343 of Title 18 of the United States Code.

15 For the defendant to be found guilty of that charge, the government must prove each of the  
16 following elements beyond a reasonable doubt:

17 First, the defendant knowingly devised a scheme or plan to defraud for the purpose of  
18 obtaining money or property by means of false or fraudulent pretenses, representations, or promises,  
19 or omitted facts. Deceitful statements of half-truths may constitute false or fraudulent  
20 representations;

21 Second, the statements made or facts omitted as part of the scheme were material; that is,  
22 they had a natural tendency to influence, or were capable of influencing, a person to part with money  
23 or property;

24 Third, the defendant acted with the intent to defraud, that is, the intent to deceive and cheat;  
25 and

26 Fourth, the defendant used, or caused to be used, an interstate wire communication to carry  
27 out or attempt to carry out an essential part of the scheme.

28 In determining whether a scheme to defraud exists, you may consider not only the

1 defendant's words and statements but also the circumstances in which they are used as a whole.

2 To convict the defendant of wire fraud based on omissions of material facts, you must find  
3 that the defendant had a duty to disclose the omitted facts arising out of a relationship of trust. That  
4 duty can arise either out of a formal fiduciary relationship, or an informal, trusting relationship in  
5 which one party acts for the benefit of another and induces the trusting party to relax the care and  
6 vigilance that it would ordinarily exercise.

7 A wiring is caused when one knows that a wire will be used in the ordinary course of business  
8 or when one can reasonably foresee such use.

9 To convict a defendant of wire fraud, the false or fraudulent pretenses, representations, or  
10 promises, or omitted facts must directly or indirectly deceive the victim about the nature of the  
11 bargain. A misrepresentation will go to the nature of the bargain if it goes to price or quality, or  
12 otherwise to essential aspects of the transaction. Whether a misrepresentation goes to the nature of  
13 the bargain may depend on the specific transaction at issue.

14 It need not have been reasonably foreseeable to the defendant that the wire communication  
15 would be interstate in nature. Rather, it must have been reasonably foreseeable to the defendant that  
16 some wire communication would occur in furtherance of the scheme, and an interstate wire  
17 communication must have actually occurred in furtherance of the scheme.

19 JURY INSTRUCTION NO. 19

20 KNOWINGLY

21 An act is done knowingly if the defendant is aware of the act and does not act through  
22 ignorance, mistake, or accident. The government is not required to prove that the defendant knew  
23 that his acts or omissions were unlawful. You may consider evidence of the defendant's words,  
24 acts, or omissions, along with all the other evidence, in deciding whether the defendant acted  
25 knowingly.

## JURY INSTRUCTION NO. 20

CONSPIRACY TO TRANSPORT MONETARY INSTRUMENTS FOR THE PURPOSE OF  
LAUNDERING (Count Ten)

The defendant is charged in Count Ten of the Superseding indictment with money laundering conspiracy in violation of Section 1956(h) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, there was an agreement to commit money laundering;

Second, the defendant knew the objective of the agreement;

Third, the defendant joined the agreement with the intent to further its unlawful purpose.

Money laundering is the knowing transportation of money representing proceeds of some form of unlawful activity from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States, designed in whole or in part to conceal the nature, location, source, ownership, or control of the proceeds of wire fraud.

## JURY INSTRUCTION NO. 21

## ATTEMPT TO EVADE OR DEFEAT INCOME TAX (Counts Eleven and Twelve)

The defendant is charged in Counts Eleven and Twelve the indictment with tax evasion in violation of Section 7201 of Title 26 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant owed more federal income tax for the calendar year 2018 (Count Eleven) and/or 2019 (Count Twelve) than was declared due on the defendant's income tax return for that calendar year;

Second, the defendant knew that more federal income tax was owed than was declared due on the defendant's income tax return;

Third, the defendant made an affirmative attempt to evade or defeat such additional tax; and

1           Fourth, in attempting to evade or defeat such additional tax, the defendant acted willfully.

2           To prove that the defendant acted “willfully,” the government must prove beyond a  
3 reasonable doubt that the defendant knew federal tax law imposed a duty on her, and the defendant  
4 intentionally and voluntarily violated that duty.

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6           JURY INSTRUCTION NO. 22

7           DUTY TO DELIBERATE

8           When you begin your deliberations, elect one member of the jury as your foreperson who  
9 will preside over the deliberations and speak for you here in court.

10           You will then discuss the case with your fellow jurors to reach agreement if you can do  
11 so. Your verdict, whether guilty or not guilty, must be unanimous.

12           Each of you must decide the case for yourself, but you should do so only after you have  
13 considered all the evidence, discussed it fully with the other jurors, and listened to the views of your  
14 fellow jurors.

15           Do not be afraid to change your opinion if the discussion persuades you that you should. But  
16 do not come to a decision simply because other jurors think it is right.

17           It is important that you attempt to reach a unanimous verdict but, of course, only if each of  
18 you can do so after having made your own conscientious decision. Do not change an honest belief  
19 about the weight and effect of the evidence simply to reach a verdict.

20           Perform these duties fairly and impartially. Do not allow personal likes or dislikes,  
21 sympathy, prejudice, fear, or public opinion to influence you. You should also not be influenced by  
22 any person’s race, color, religious beliefs, national ancestry, sexual orientation, gender identity,  
23 gender, or economic circumstances. Also, do not allow yourself to be influenced by personal likes  
24 or dislikes, sympathy, prejudice, fear, public opinion, or biases, including unconscious  
25 biases. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously  
26 reject but may be expressed without conscious awareness, control, or intention.

27           It is your duty as jurors to consult with one another and to deliberate with one another with  
28 a view towards reaching an agreement if you can do so. During your deliberations, you should not

1 hesitate to reexamine your own views and change your opinion if you become persuaded that it is  
2 wrong.

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4 **JURY INSTRUCTION NO. 23**

5 **CONSIDERATION OF EVIDENCE—CONDUCT OF THE JURY**

6 Because you must base your verdict only on the evidence received in the case and on these  
7 instructions, I remind you that you must not be exposed to any other information about the case or  
8 to the issues it involves. Except for discussing the case with your fellow jurors during your  
9 deliberations:

10 Do not communicate with anyone in any way and do not let anyone else communicate with  
11 you in any way about the merits of the case or anything to do with it. This restriction includes  
12 discussing the case in person, in writing, by phone, tablet, computer, or any other means, via email,  
13 text messaging, or any Internet chat room, blog, website or any other forms of social media. This  
14 restriction applies to communicating with your family members, your employer, the media or press,  
15 and the people involved in the trial. If you are asked or approached in any way about your jury  
16 service or anything about this case, you must respond that you have been ordered not to discuss the  
17 matter and to report the contact to the court.

18 Do not read, watch, or listen to any news or media accounts or commentary about the case  
19 or anything to do with it; do not do any research, such as consulting dictionaries, searching the  
20 Internet or using other reference materials; and do not make any investigation or in any other way  
21 try to learn about the case on your own.

22 The law requires these restrictions to ensure the parties have a fair trial based on the same  
23 evidence that each party has had an opportunity to address. A juror who violates these restrictions  
24 jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire  
25 trial process to start over. If any juror is exposed to any outside information, please notify the court  
26 immediately.

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JURY INSTRUCTION NO. 24

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## USE OF NOTES

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Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

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JURY INSTRUCTION NO. 25

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## JURY CONSIDERATION OF PUNISHMENT

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The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

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JURY INSTRUCTION NO. 26

14

## VERDICT FORM

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A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.

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JURY INSTRUCTION NO. 27

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## COMMUNICATION WITH COURT

21

If it becomes necessary during your deliberations to communicate with me, you may send a note through the clerk, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, on any question submitted to you, including the question of the guilt of the defendant, until after you have reached a unanimous

1 verdict or have been discharged.  
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